

**H. B. 2050**

(By Delegate Guthrie)

[Introduced January 14, 2015; referred to the  
Committee on the Judiciary then Finance.]

10 A BILL to amend and reenact §31D-1-150 of the Code of West Virginia, 1931, as amended; to  
11 amend said code by adding thereto two new sections, designated §31D-7-740 and §31D-7-  
12 741; to amend said code by adding thereto a new section, designated §31D-8-834; to amend  
13 said code by adding thereto a new section, designated §31D-15-1540; and to amend said  
14 code by adding thereto a new section, designated §31D-16-1621, all relating generally to the  
15 accountability of a corporation's political activities; defining additional terms; requiring  
16 annual authorization and approval by a majority of shareholders for corporations spending  
17 a yearly aggregate of \$10,000 or more for political activities in this state and notice of such  
18 expenditures on corporate website; prohibiting political expenditures by corporations if a  
19 majority of shareholders are institutional investors prohibited from taking political positions;  
20 providing for director liability for spending without proper authorization; requiring  
21 disclosure of corporate political activities to shareholders and the public; authorizing

1 shareholders to seek prorata rebates for their portion of investments spent by the corporation  
2 on any political expenditure or contribution the shareholder does not agree with; and  
3 applying these new requirements to foreign corporations.

4 *Be it enacted by the Legislature of West Virginia:*

5 That §31D-1-150 of the Code of West Virginia, 1931, as amended, be amended and  
6 reenacted; that said code be amended by adding thereto two new sections, designated §31D-7-740  
7 and §31D-7-741; that said code be amended by adding thereto a new section, designated §31D-8-  
8 834; that said code be amended by adding thereto a new section, designated §31D-15-1540; and that  
9 said code be amended by adding thereto a new section, designated §31D-16-1621, all to read as  
10 follows:

11 **ARTICLE 1. GENERAL PROVISIONS.**

12 **§31D-1-150. Definitions.**

13 As used in this chapter, unless the context otherwise requires a different meaning, the term:

14 (1) "Articles of incorporation" includes, but is not limited to, amended and restated articles  
15 of incorporation and articles of merger.

16 (2) "Authorized shares" means the shares of all classes a domestic or foreign corporation is  
17 authorized to issue.

18 (3) "Conspicuous" means written so that a reasonable person against whom the writing is to  
19 operate should have noticed, including, but not limited to, printing in italics or boldface or  
20 contrasting color, or typing in capitals or underlined.

21 (4) "Contribution or expenditure" means any monetary and nonmonetary political

1 contributions and expenditures not deductible under Section 162 (e)(1)(B) of the Internal Revenue  
2 Code, including, but not limited to, contributions to or expenditures on behalf of political candidates,  
3 political parties, political committees and other political entities organized and operating under 26  
4 U.S.C. §527 of the Internal Revenue Code and any portion of any dues or similar payments made  
5 to any tax exempt organization that is used for an expenditure or contribution if made directly by the  
6 corporation would not be deductible under Section 162 (e)(1)(B) of the Internal Revenue Code, any  
7 contribution or expenditure, as those terms are defined in 2 U.S.C. §431, as well as any contribution  
8 or expenditure defined under section two-a, article eight, chapter three of this code, and also includes  
9 any direct or indirect payment, distribution, loan, advance, deposit or gift of money, any services or  
10 anything of value (except a loan of money by a national or state bank made in accordance with the  
11 applicable banking laws and regulations and in the ordinary course of business) to any candidate,  
12 campaign committee or political party or organization, in connection with any election to any office.

13 The term “contribution or expenditure” does not include:

14 (A) Communications by a corporation to its stockholders and executive or administrative  
15 personnel and their families on any subject;

16 (B) Nonpartisan registration and get-out-the-vote campaigns by a corporation aimed at its  
17 stockholders and executive or administrative personnel and their families; and

18 (C) The establishment, administration and solicitation of contributions to a separate  
19 segregated fund to be utilized for political purposes by a corporation.

20 (4) (5) "Corporation" or "domestic corporation" means a corporation for profit, which is not  
21 a foreign corporation, incorporated under or subject to the provisions of this chapter.

1       ~~(5)~~ (6) "Deliver" or "delivery" means any method of delivery used in conventional  
2 commercial practice, including, but not limited to, delivery by hand, mail, commercial delivery and  
3 electronic transmission.

4       ~~(6)~~ (7) "Distribution" means a direct or indirect transfer of money or other property or  
5 incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any  
6 of its shares: *Provided*, That "distribution" does not include a direct or indirect transfer of a  
7 corporation's own shares. A distribution may be in the form of a declaration or payment of a  
8 dividend; a purchase, redemption or other acquisition of shares; or a distribution of indebtedness.

9       ~~(7)~~ (8) "Effective date of notice" means the date as determined pursuant to section one  
10 hundred fifty-one of this article.

11       ~~(8)~~ (9) "Electronic transmission" or "electronically transmitted" means any process of  
12 communication not directly involving the physical transfer of paper that is suitable for the retention,  
13 retrieval and reproduction of information by the recipient.

14       ~~(9)~~ (10) "Employee" includes an officer and may include a director: *Provided*, That the  
15 director has accepted duties that make him or her also an employee.

16       ~~(10)~~ (11) "Entity" includes corporations and foreign corporations; nonprofit corporations;  
17 profit and nonprofit unincorporated associations; limited liability companies and foreign limited  
18 liability companies; business trusts, estates, partnerships, trusts and two or more persons having a  
19 joint or common economic interest; and state, United States and foreign government.

20       ~~(11)~~ (12) "Foreign corporation" means a corporation for profit incorporated under a law other  
21 than the laws of this state.

1        (13) “General treasury funds” means those moneys in possession of a corporation  
2 incorporated under the laws of the state in the normal course of business. General treasury funds  
3 may include, among others, funds from sales, accounts payable, loans, investments, bonds or debt  
4 instruments.

5        ~~(12)~~ (14) "Governmental subdivision" includes, but is not limited to, authorities, counties,  
6 districts and municipalities.

7        ~~(13)~~ (15) "Individual" includes, but is not limited to, the estate of an incompetent or deceased  
8 individual.

9        (16) “Issue advocacy campaign” means contributions or expenditures for any communication  
10 to the general public intended to encourage the public to contact a government official regarding  
11 pending legislation, public policy or a government rule or regulation. Issue advocacy campaign does  
12 not include contributions or expenditures for registered lobbyists or other persons employed by the  
13 corporation to lobby directly state or federal government officials.

14        (17) “Known at the time of the authorization vote” means that, at the time the corporation  
15 seeks authorization from shareholders to spend corporate funds for political activities in this state:  
16 (A) The corporation’s officers, directors or employees have identified a specific political activity for  
17 the corporation to support or oppose; (B) corporate officers, directors or employees have taken steps  
18 to obligate funds to a political activity; or (C) the corporation has a regularly scheduled payment to  
19 a trade association or other entity to pay for a political activity in the next twelve months.

20        (18) “Majority of all shareholders” means fifty percent plus one of all outstanding voting  
21 securities, as provided in section seven hundred twenty-one, article seven of this chapter.

1 Shareholders not casting votes shall not count toward affirmative authorization under this chapter.

2 ~~(14)~~ (19) "Person" includes, but is not limited to, an individual and an entity.

3 (20) "Political activities" means any contributions or expenditures made directly or indirectly  
4 to, or in support of or opposition to, any candidate, political party, committee, electioneering  
5 communication, ballot measure campaign, or an issue advocacy campaign. Political activities do  
6 not include activities defined as lobbying under any local, state or federal law.

7 ~~(15)~~ (21) "Principal office" means the office so designated in the return required pursuant to  
8 section three, article twelve-c, chapter eleven of this code where the principal executive offices of  
9 a domestic or foreign corporation are located.

10 ~~(16)~~ (22) "Proceeding" includes, but is not limited to, civil suits and criminal, administrative  
11 and investigatory actions.

12 ~~(17)~~ (23) "Record date" means the date established under article six or seven of this chapter  
13 on which a corporation determines the identity of its shareholders and their shareholdings. The  
14 determinations are to be made as of the close of business on the record date unless another time for  
15 doing so is specified when the record date is fixed.

16 ~~(18)~~ (24) "Registered agent" means the agent identified by the corporation pursuant to section  
17 five hundred one, article five of this chapter.

18 ~~(19)~~ (25) "Registered office" means the address of the registered agent for the corporation,  
19 as provided in section five hundred one, article five of this chapter.

20 ~~(20)~~ (26) "Secretary" means the corporate officer to whom the board of directors has  
21 delegated responsibility under subsection (c), section eight hundred forty, article eight of this chapter

1 for custody of the minutes of the meetings of the board of directors and the meetings of the  
2 shareholders and for authenticating records of the corporation.

3 (27) "Separate segregated fund" means a political action committee formed by a corporation  
4 for the purpose of making contributions to candidates for office or to political parties. A "separate  
5 segregated fund" which supports federal candidates has the same meaning as that found in 2 U.S.C.  
6 §441b.

7 ~~(21)~~ (28) "Shareholder" means the person in whose name shares are registered in the records  
8 of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee  
9 certificate on file with a corporation.

10 ~~(22)~~ (29) "Shares" means the units into which the proprietary interests in a corporation are  
11 divided.

12 ~~(23)~~ (30) "Sign" or "signature" includes, but is not limited to, any manual, facsimile,  
13 conformed or electronic signature with means to identify a record by signature, mark or other  
14 symbol, with intent to authenticate it.

15 ~~(24)~~ (31) "State" when referring to a part of the United States, includes a state and  
16 commonwealth and a territory and insular possession of the United States and their agencies and  
17 governmental subdivisions.

18 ~~(25)~~ (32) "Subscriber" means a person who subscribes for shares in a corporation, whether  
19 before or after incorporation.

20 ~~(26)~~ (33) "United States" includes, but is not limited to, districts, authorities, bureaus,  
21 commissions, departments and any other agency of the United States.

1           ~~(27)~~ (34) "Voting group" means all shares of one or more classes or series that, pursuant to  
2 the articles of incorporation or this chapter, are entitled to vote and be counted together collectively  
3 on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this  
4 chapter to vote generally on the matter are for that purpose a single voting group.

5           ~~(28)~~ (35) "Voting power" means the current power to vote in the election of directors.

## 6 **ARTICLE 7. SHAREHOLDERS.**

### 7                                   PART 4. SHAREHOLDERS VOTE ON CORPORATE

#### 8   POLITICAL ACTIVITIES.

#### 9 **§31D-7-740. Annual vote.**

10           (a) A corporation spending in the aggregate \$10,000 or more of corporate treasury funds on  
11 political activities in this state shall comply with the requirements of this section and section seven  
12 hundred forty-one of this article, including the posting a notice, within forty-eight hours of the  
13 expenditure, on the website of the corporation.

14           (b) Any proxy or consent or authorization for an annual meeting of the shareholders of a  
15 corporation held pursuant to section seven hundred one of this article, or a special meeting held  
16 pursuant to section seven hundred two of this article, shall provide for a separate resolution subject  
17 to shareholder vote to approve any spending of \$10,000 or more by the corporation for any political  
18 activity.

19           (c) Notwithstanding the requirement of subsection (b) of this section for an annual  
20 shareholder vote to authorize any spending of \$10,000 or more by the corporation for political  
21 activity, a corporation may request authorization for spending on political activities in this state on

1 a more frequent basis. Any authorization request by the corporation that is not made during an  
2 annual authorization shall be considered a special authorization.

3 (d) If the corporation spends less than an aggregate of \$10,000 in a twelve-month period for  
4 political activities in this state, it does not have to seek shareholder authorization for the spending.

5 **§31D-7-741. Shareholder approval of political activities.**

6 (a) When seeking shareholder authorization for expenditures for political activities in this  
7 state, the corporation shall request the authority to spend a maximum dollar amount in the next  
8 twelve months;

9 (b) If known at the time of the shareholder vote, the corporation shall articulate whether the  
10 corporate treasury funds so authorized are intended to benefit or defeat specific candidates, ballot  
11 measures or issue advocacy campaigns or whether it will be paid to specific nonprofits or trade  
12 associations for political activities in this state;

13 (c) To be effective, the authorization vote must garner support from a majority of the  
14 corporation's shareholders;

15 (d) A vote by the shareholders to approve or disapprove any spending of \$10,000 or more by  
16 a corporation for a political activity is binding on the corporation;

17 (e) Notwithstanding the requirement of subsection (b), section seven hundred forty of this  
18 article for an annual shareholder vote to authorize any spending of \$10,000 or more by the  
19 corporation for any political activity, a corporation may request a special authorization for additional  
20 spending on political activities in this state, provided that:

21 (1) All spending on political activities in this state of \$10,000 or more shall be authorized by

1 a shareholder majority vote; and

2 (2) For any special authorization, the corporation shall articulate whether the corporate  
3 treasury funds so authorized are intended to benefit or defeat candidates, ballot measures or issue  
4 advocacy campaigns, or will be paid to specific nonprofits or trade associations for political activities  
5 in this state, at the time the special authorization is requested.

6 (f) If a majority of a corporation's shares is owned by institutional investors that are  
7 prohibited from taking political positions, such as state and local pension funds, insurance  
8 companies, foundations, churches, colleges and universities, the corporation may not make  
9 expenditures for political activities.

10 (g) Notwithstanding any provision of this article to the contrary, shareholders of a corporation  
11 may request a pro rata rebate for that portion of their investments spent by the corporation on any  
12 political expenditures and contributions with which the shareholders disagree.

13 **ARTICLE 8. DIRECTORS AND OFFICERS.**

14 **PART 3. DIRECTORS.**

15 **§31D-8-834. Directors' liability for unlawful political expenditures.**

16 (a) A director who votes for or assents to a expenditure or contribution without the  
17 authorization of shareholders pursuant to section seven hundred forty, article seven of this chapter,  
18 is personally liable to the corporation for:

19 (1) The amount of the unauthorized expenditure or contribution;

20 (2) Damages in respect of any loss or damage sustained by the corporation as a result of the  
21 unauthorized expenditure or contribution; and

1 (3) Interest on the amount of the unauthorized expenditure or contribution for the period:

2 (A) Beginning with the date when the expenditure or contribution was made or incurred; and

3 (B) Ending with the date when that amount is repaid to the corporation.

4 (b) Where two or more directors are subject to liability pursuant to this section, each director  
5 is jointly and severally liable.

6 (c) Where only part of any expenditure or contribution was made or incurred in violation of  
7 the provisions of section seven hundred forty, article seven of this chapter, this section applies only  
8 to that portion made or incurred in violation of section seven hundred forty, article seven of this  
9 chapter.

10 (d) It is a defense to liability imposed by this section:

11 (1) If the unauthorized expenditure or contribution has been repaid to the corporation,  
12 together with any interest on that amount due under subdivision (3), subsection (a) of this section;

13 (2) That repayment has been approved by the shareholders; and

14 (3) The notice to shareholders of the meeting during which full disclosure is made, the  
15 contents of the notice include:

16 (A) The circumstances in which the unauthorized expenditure or contribution; and

17 (B) The circumstances in which, and the person or persons by whom, the repayment was  
18 made.

19 **ARTICLE 15. FOREIGN CORPORATIONS.**

20 PART 4. Corporate Political Activity.

21 **§31D-15-1540. Applicability of provisions in this chapter related to political activity to foreign**



1 the political activities of corporations they own. Shareholders and the public have a right to know  
2 how these corporations are spending their funds to make political contributions or expenditures  
3 benefitting candidates, political parties, and political causes.

4 (4) Corporations should be accountable to their shareholders prior to making political  
5 contributions or expenditures affecting local and state governance and public policy. Requiring the  
6 express approval of a corporation's shareholders prior to making political contributions or  
7 expenditures will help establish accountability.

8 (5) If corporations use corporate general treasury funds for political expenditures, then those  
9 funds should be clearly reported to shareholders and shareholders should be able to authorize the use  
10 of corporate general treasury funds for political expenditures.

11 (b) At least quarterly during each fiscal year, a corporation that makes contributions or  
12 expenditures for political activities in this state shall notify its shareholders, in writing, of the nature  
13 of all its political activities in this state, funded by either its separate segregated fund or through its  
14 general corporate treasury, including contributions or expenditures made directly or indirectly.

15 (c) A report made pursuant to this section shall include the following:

16 (1) The date of the contributions or expenditures;

17 (2) The amount of the contributions or expenditures;

18 (3) The identity of the candidate, political party, committee, electioneering communication,  
19 ballot measure campaign or issue advocacy campaign;

20 (4) If the contributions or expenditures were made for or against a candidate, including an  
21 electioneering communication as defined in section one-a, article eight, chapter three of this code,

1 the office sought by the candidate and the political party affiliation of the candidate;

2 (5) If the contributions or expenditures were made for or against a ballot measure, the  
 3 purpose of the measure and whether the contributions or expenditures were made in support or  
 4 opposition to the ballot measure;

5 (6) If the contributions or expenditures were made for or against an issue advocacy campaign,  
 6 the nature of the political issue and whether the contributions were made in support or opposition  
 7 to the political issue; and

8 (7) All expenditures made by a separate segregated fund affiliated with the corporation.

9 (d) (1) The quarterly reports of political activities in this state by a corporation are public  
 10 records.

11 (2) A copy of the reports filed pursuant to subsection (a) shall be posted for at least one year  
 12 on the corporation's website, if any.

NOTE: The purpose of this bill is to create the “West Virginia Corporate Political Accountability Act of 2015” relating to the accountability of a corporation’s political activities. It defines additional terms and requires annual authorization and approval by a majority of shareholders for corporations spending a yearly aggregate of \$10,000 or more for political activities in this state; requires a corporation to post notice of such expenditures on the corporate website within forty-eight hours of the expenditure; prohibits political expenditures by corporations if a majority of shareholders are institutional investors prohibited from taking political positions. It provides for director liability for spending without proper authorization, requires disclosure of corporate political activities to shareholders and the public and applies these new requirements to foreign corporations. And, the bill permits shareholders to seek pro rata rebates for their portion of investments spent by the corporation on any political expenditure or contribution the shareholder does not agree with.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§31D-7-740, §31D-7-741, §31D-8-834, §31D-15-1540 and §31D-16-1621 are new; therefore, they have been completely underscored.